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Clarissa Harlowe, Pleasant Rawlins and Eighteenth-Century Discourses of Law

The rape of Clarissa has provoked considerable critical comment in recent years, much of which places it in a context which Richardson would not have anticipated.¹ Eagleton admits to not addressing issues ‘consciously posed by the text, but one[s] that it can be persuaded to raise by a certain reading’(p.86). Richardson’s extensive correspondence with contemporary readers gives a clear indication as to how he intended readers to approach *Clarissa* (1747-8): ‘a History of Life and Manners’(p.158), expressing concern ‘to avoid hurting that kind of Historical Faith which Fiction itself is generally read with, tho’ we know it to be Fiction’(p.85).² William Shenstone criticised Richardson’s attention to detail: ‘he has Needlessly spun out his Book to an extravagant Prolixity...Nothing but *Fact* could authorize so much particularity, and indeed not *that*; but in a Court of Justice’.³ Perhaps unwittingly, Shenstone identifies an important aspect of Richardson’s narrative strategy: *Clarissa* is, as Keymer observes, ‘the literary equivalent of a trial’(p.221).⁴

This paper will reconstruct the trial narrative of Haagen Swendsen, indicted in 1702 for abducting and forcibly marrying an heiress, Pleasant Rawlins, and consider it in relation to *Clarissa*.⁵ Swendsen's trial, presented in the collected *State Trials*, elucidates central aspects of Richardson's text, demonstrating the legal context to Clarissa's predicament, in particular the difficulties she would have been likely to experience had she proceeded to court. It also

1 The following provides an introductory overview of critical work on *Clarissa*: R.F.Brissenden, *Virtue in Distress: Studies in the Novel of Sentiment from Richardson to Sade*, London: Macmillan, 1974; T.Castle, *Clarissa's Ciphers*, London: Cornell University Press, 1982; M.Doody, *A Natural Passion: A Study of the Novels of Samuel Richardson*, Oxford: Clarendon Press, 1974; T.Eagleton, *The Rape of Clarissa: Writing, Sexuality and Class Struggle in Samuel Richardson*, Oxford: Basil Blackwell, 1982; R.A.Erickson, ‘“Written in the Heart”: *Clarissa* and Scripture’, *Eighteenth-Century Fiction*, 2, no.1, October 1989, pp.17-52; C.Flynn, *Richardson: A Man of Letters*, Princeton: Princeton University Press, 1982; T.Gwilliam, *Samuel Richardson's Fictions of Gender*, Stanford: Stanford University Press, 1993; T.Keymer, *Richardson's Clarissa and the Eighteenth-Century Reader*, Cambridge: Cambridge University Press, 1992; M.Kinhead-Weekes, *Samuel Richardson: Dramatic Novelist*, London: Methuen, 1973; W.Beatty Warner, *Reading Clarissa: The Struggles of Interpretation*, London: Yale University Press, 1979; J.P.Zomchick, *Family and the Law in Eighteenth-Century Fiction: The Public Conscience in the Private Domain*, Cambridge: Cambridge University Press, 1993.

For discussions of Richardson’s revisions of the text and contemporary criticism, see Samuel Richardson: A Biography, by T.C.Eaves and B.D.Kimpel, Oxford: Clarendon Press, 1971, chapter XII; Shirley Van Marter’s essays in *Studies in Bibliography* 26 (1973), pp.107-32 and 28 (1975), pp.119-52. See also Richardson’s extensive discussions with his readers, *Selected Letters of Samuel Richardson*, ed.J.Carroll, Oxford: Clarendon Press, 1964.

2 All references to Richardson’s letters are taken from Carroll’s *Selected Letters*.

3 William Shenstone to Lady Luxborough, 23rd March, 1749/50, in *Letters of William Shenstone*, ed.D.Mallam, Minneapolis, 1939, p.200.

4 See Keymer’s excellent analysis of Clarissa and ‘forensic realism’, in Richardson’s *Clarissa and the Eighteenth-Century Reader*, chapter 4. Keymer argues that Richardson presents ‘his narrators not as mere objective witnesses but as plaintiffs, defendants and advocates...who offer in their testimonies radically adversarial constructions’, noting that ‘the alternating narrative structure in which each narrator argues his own cause and contests, often explicitly, that of his opponent’(p.230), mirrors the adversarial format of contemporary trials.

5 All references to the Swendsen and Baynton trials are from *State Trials*, edited and compiled by T.B.Howell and T.J.Howell, 33 vols, London, 1809-26, volume XIV. The *State Trials* is a collection of court transcripts designed for those interested in law, as opposed to pamphlets and magazine accounts produced for the public, where details may be exaggerated or removed according to the perceived interests of the target ‘audience’. In the *State Trials* the Howells, father and son, organised existing material from other editors in order to provide one of the most authoritative and coherent accounts of judicial proceedings of the seventeenth and eighteenth centuries. For an account of the different kinds of law reports, see W.Holdsworth, *A History of English Law*, 17 vols, London: Methuen, 1938, XII,pp.101-62, especially pp.102-3,110-15,130-46. Swendsen, described in the trial transcript as ‘a trader in Norway’(p.695), was living in Middlesex at the time of the alleged crime. The trial was held at the Queen's Bench.

helps to contextualise *Clarissa*, to site it within contemporary popular debate concerning Hardwicke's Act and the related issues of heiress abduction and forcible marriage.

Hardwicke's Act (1753) was intended largely to prevent the clandestine marriages of minors, to put an end to heiress abduction and seduction, which enabled the seducer to obtain a woman's money by marriage. It gave parents and guardians greater control over their wards' marriages by voiding any marriage of a person under twenty one if there was no written parental consent. That Richardson had the issue firmly in mind when writing *Clarissa* is clear: 'it is one of my Two principal Views, to admonish Parents agt. forcing their Children's Inclinations, in an Article so essential to their Happiness, as Marriage'.¹ Richardson was keen to emphasise that *Clarissa* would never have been abducted and ultimately raped had her family not threatened to force her to marry Solmes.² He told Aaron Hill, 'I have consulted two very delicate Minds of the Sex...They have both confessed, that they think *Clarissa* had sufficient Provocations to throw herself into Lovelace's Protection'.³

In the eighteenth century trials were regarded as a form of entertainment and throughout the century there was wide public interest in legal publications, from legal handbooks to trial transcripts and more salacious versions of court events.⁴ The reader's entertainment lay partly in the reinterpreting of evidence; as Zomchick notes of novels, 'readers become...unofficial magistrates'.⁵ Richardson clearly anticipated such a rôle for his readers, writing to Lady Bradshaigh: '[I] must leave it to my Sovereign Judges the Readers, to agree as well as they can, which to blame, which to acquit'.⁶ As a printer, he was inevitably aware of the popular market for crime and trial narratives.⁷ In 1730 he printed *A Complete Collection of State Trials* and, as Vermillion notes, 'Many bills concerning clandestine marriage passed through his print shop while he was working on *Clarissa* and *Grandison*'(p.396).⁸ It is reasonable to assume that some of this material should have informed his own writing.

The central issues of the Rawlins and Harlowe cases are fundamentally the same: abduction and rape of an heiress. Both Lovelace and Swendsen are guilty under the statute 3 Hen VII c.2 (1486):⁹ 'if any person shall for lucre

1 Letter to Aaron Hill, 29th October, 1746, in Selected Letters, p.73.

2 *Clarissa* is aware, as twentieth-century readers often are not, that marriage to Solmes would mean submitting to legally sanctioned rape. A woman did not have the right to refuse conjugal relations, even with an estranged husband, until 1882. Rape within marriage was of course not actively endorsed by law but it did not become illegal until 1991. This may help to put into context *Clarissa*'s plea, 'But what law, what ceremony, can give a man a right to a heart which abhors him?'(p.87) and her view of marriage as 'an act of violence'(p.365), with the wife as 'the miserable property'(p.370) of her husband.

3 Letter to Aaron Hill, 26th January, 1746/7, Selected Letters, p.82. Space forbids detailed consideration of *Clarissa* in relation to Hardwicke's Act in this essay but M.Vermillion gives an interesting account in 'Clarissa and the Marriage Act', *Eighteenth-Century Fiction*, 9, no.4, July, 1997, pp.395- 412. Susan Staves does not discuss *Clarissa* but provides a very useful account of seduced maidens in literature and law, in 'British Seduced Maidens', *Eighteenth-Century Studies*, 14, no.2, Winter, 1980-1, pp.109- 134. I discuss Hardwicke's Act and related legal issues in relation to eighteenth-century fiction in *Fictions of Law: An Investigation of the Law in Eighteenth-Century English Fiction*, Anglo-American Studies Series 9, Frankfurt: Peter Lang, 1997, chapter 1.

4 Stone makes the important distinction between transcripts written for lawyers and unashamedly salacious versions of court events. See L.Stone, *Road to Divorce: England 1530-1987*, Oxford: Clarendon Press, 1990, pp.248-253.

5 J.P.Zomchick, "'A Penetration which Nothing Can Deceive": Gender and Juridical Discourse in Some Eighteenth-Century Narratives', *Studies in English Literature*, 29, 1989, pp.535-561 (p.540). R.Posner gives a useful introduction to the theory of literature and law in *Law and Literature: A Misunderstood Relation*, London: Harvard University Press, 1988, pp.1-21.

6 Letter to lady Bradshaigh, 8th February, 1754, in Selected Letters, p.280.

7 See L.Faller, *Crime and Defoe*, Cambridge: Cambridge University Press, 1993, pp.1-31; M.Foucault, *Discipline and Punish*, translated by A.Sheridan, London: Penguin, 1977, pp.65-9; P.Rawlings, *Drunks, Whores and Idle Apprentices: Criminal Biographies of the Eighteenth Century*, London: Routledge, 1992; J.J.Richetti, *Popular Fiction Before Richardson: Narrative Patterns, 1700-1739*, Oxford: Clarendon Press, 1992, pp.25-35.

8 Richardson held the contract for printing House of Commons bills, orders and reports and ultimately the Commons Journals. See Samuel Richardson: *A Biography*, by T.C.Eaves and B.D.Kimpel, pp.43,56-7 and W.Sale, *Samuel Richardson: Master Printer*, Ithaca: Cornell University Press, 1950.

9 I refer to Swendsen as guilty simply because the jury judged him to be so; readers of the transcripts may not be entirely confident in this judgement.

take any woman...having substance either in goods or lands, or being heir apparent to her ancestors, contrary to her will; and afterwards she be married to such misdoer...or defiled; such person, and all his accessories, shall be deemed principal felons: and by statute 39 Eliz c.9 [1597] the benefit of clergy¹ is taken away from all such felons'.²

The law reveals its concern with property in declaring that, as Blackstone explains, 'the indictment must allege that the taking was for lucre'(IV,p.208).³ This does not apply to Lovelace but Clarissa's inheritance would provide useful evidence if her family wished to claim that Lovelace did indeed want to gain control of her money by marrying her: Clarissa herself notes, 'Had I been his but a *month*, he must have possessed the estate on which my relations had set their hearts'.⁴ Swendsen's indictment declared that he 'procure[d] [Rawlins] against her will, in matrimony', 'for the lucre of [her] estate'(p.560).

Blackstone explains, 'It must appear that she was taken away against her will'(IV,p.208) and this clearly worries Clarissa: 'when it came to be seen that I had consented to give him a clandestine meeting'(p.1253). Lovelace manipulates Clarissa's fear of forcible marriage to Solmes in order to persuade her to leave, promising 'to protect both [her] person and character'(p.376). Yet Clarissa realises that the consensus would probably be 'that [she] ought not to have thrown [herself] into the power of such a man'(p.1253). Richardson was keen to defend Clarissa on this point, assuring Aaron Hill that when he consulted two of his female readers about the scene, they admitted that 'they should not, in her Case, have been able, however reluctant, to avoid being carried off, (tricked off) by so determined, so prepared a Contriver'.⁵

Rawlins was apparently tricked by Sarah Baynton, Swendsen's associate, who had her arrested for debt(p.624); the trial narrative recounts that she 'went willingly enough' with the bailiffs 'because she thought...she should be bailed'(p.581). They claimed that no-one was coming to bail her and Baynton suggested that Rawlins marry 'her rich brother',⁶ 'the bailiffs threatening her severely, that to Newgate she must go, if she did not'(p.564). Mrs Sinclair employs similar stratagems, leading to Clarissa being arrested and imprisoned 'for £150 pretendedly due for board and lodgings'(p.1046) but not with Lovelace's collusion; he responds angrily to the news: 'Let me know how she has been treated: if roughly, woe be to the guilty'(p.1047).

Zomchick argues that Clarissa's case could be weakened by the 'need to "show dislike"', for example, by failing 'to contradict Lovelace's public assertions that they were married'(p.97). Lovelace persuades her, 'If you are *known* to be mine, or if you are but *thought* to be so, there will probably be an end of your brother's contrivances'(p.526). As if anticipating a court case, he relates, 'Sinclair and the nymphs...all offer their helping hands. Why not? they say: has she not passed for my wife before them all?'(p.702).

Lovelace cleverly establishes supporting evidence, travelling to Clarissa's lodgings in Hampstead dressed as a bridegroom(p.761) and having his coachman tell Mrs Moore, Clarissa's landlady, that Clarissa ran away from her

1 Benefit of clergy originated when the civil law gave clergy exemption from punishment for a wide range of crimes and was ultimately extended to anyone who could read and write. In 1692 it was extended to women and in 1706 the reading qualification was abolished.

2 Sir W.Blackstone, Commentaries On The Laws Of England (1753), sixth edition, 4 vols, Dublin, 1775, IV,p.208.

3 Vermillion discusses heiresses as property on pp.402-5. See also Staves's discussion of legal remedies for seduction, specifically, breach of promise, aggravated trespass and loss of service, pp.128-31. For a discussion of the laws regarding marriage, seduction and rape as they relate to eighteenth-century fiction, see B.Swan, Fictions of Law, chapters 1 and 3.

4 S.Richardson, Clarissa or, The History of a Young Lady (1747-8), edited by A.Ross, London: Penguin, 1985, pp.1161-2. All references are to this edition unless otherwise stated. A man gained absolute control over his wife's property in marriage. See L.Holcombe, Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England, Oxford: Martin Robertson, 1983.

5 Letter to Aaron Hill, 26th January, 1746/7, Selected Letters, p.83. Kinhead-Weekes emphasises that Clarissa does not elope with Lovelace and gives an interesting account of Lovelace's stratagems in Samuel Richardson: Dramatic Novelist, pp.171-4.

6 A husband was deemed to be liable for his wife's debts, since he acquired her property on marriage and so she had no property to satisfy debts personally.

'husband' in a fit of jealousy(pp.764-5). Clarissa bravely confronts Lovelace, as if in court, 'Will you say, sir, that we are married?'(p.793). Lovelace profits from her 'wildness' and prevaricates: 'If [marriage] be the union of two hearts...I must say we are *not*; since now I see you hate me. If it be the completion of marriage, to my confusion and regret I must own we are *not*'(p.794). However, having obtained sympathy from Mrs Moore and her companions, clearly paralleling a court jury, he presents evidence which he knows Clarissa cannot refute: 'do not...bring into question before these gentlewomen a point you have acknowledged before those who know us better'. Angered by Lovelace's taunts and veiled threats, Clarissa challenges him, seeking to establish her own evidence: 'I own no marriage with thee! Bear witness, ladies'. However, Lovelace's 'kneeling humility affect[s] them'(p.796). Continuing the juridical parallel, Lovelace calls Captain Tomlinson to 'testify', 'to convince them entirely of the truth of all [he] had asserted'(p.802).

Lovelace acts cleverly in this mock trial but the jury is undecided: 'Miss Rawlins' was of opinion, that nothing more ought to be allowed [him]'; 'Mrs Moore owned that the refusal was a strange piece of tyranny to an husband, if [he] were an husband'(p.809); Mrs Bevis, Lovelace's 'fast friend'(p.815), wishes 'to reconcile man and wife'(p.810). As Kinhead-Weekes notes, Lovelace's appearance and aristocratic lineage do much to predispose the ladies in his favour but given that 'He can produce nine witnesses to swear that she has passed as Mrs Lovelace, and if he has legal rights as her husband, the people at Hampstead have to be very careful how they go about offending a man of his status and influence'(p.221).

The trial continues in Captain Tomlinson's subsequent visit. Lovelace and the ladies withdraw, leaving Clarissa to testify concerning 'insults offered to [her] person'(p.826). Clarissa is unaware that this apparent trial *in camera* is fundamentally flawed in that Tomlinson is in Lovelace's employ. Lovelace finally promises to marry Clarissa 'again', 'to oblige and satisfy Mr Harlowe' and his female jury are 'ready to clap their hands for joy'(p.839).

The testimony at Lovelace's mock trial is not far removed from the reality of trials such as Swendsen's. Rawlins also admitted her marriage publicly. Bulkley, a barber, related that when he congratulated them on their marriage, Rawlins replied, curiously using legal language ideal for such a court case, 'she did not question it, since what she had done, was with her own voluntary consent'(p.587). Hudson, an upholsterer, testified similarly that when he met the couple, Rawlins 'said, this is my dear husband, and took him about the neck and kissed him'(p.588).

Yet Blackstone notes that even if a woman consented to leave her family, 'if she afterwards refuse to continue with the offender, and be forced against her will, she may, from that time, as properly be said to be taken against her will, as if she never had given any consent'(IV,p.209). This is demonstrated by the Rawlins case, which rests largely on whether or not Rawlins encouraged Swendsen. Baynton challenged Rawlins during her subsequent trial as an accessory to Swendsen's crime, 'if you had no mind to him, why did you give him such encouragement, as to...go betwixt his legs and kiss him?'(p.621). Rawlins denied such behaviour but when asked 'Did you ever tell [Baynton] that you wished yourself Swendsen's wife?' she replied evasively, 'I do not know whether I did or no'(p.612).

If Clarissa went to court, the issues debated would be essentially the same. Her behaviour could be construed as encouraging and coquettish, as Lovelace presents it to Mrs Moore, and her letters, which provide him with ideal evidence, reveal that she did care for him and intended to marry him.² Arabella deliberately casts doubt on any plea Clarissa could make to argue that she had 'shown dislike' of Lovelace, presenting her as 'a runaway daughter! living with her fellow, as long as he would live with her'(p.1255). She exploits the potential legal difficulties to insult Clarissa, commenting maliciously, 'possibly you may not at present behave so prudently in some certain points as to entitle yourself to public justice'(p.1256).

Arabella may be alluding to the possibility of pregnancy. Jacob explains: 'formerly it was adjudged not to be a

1 A minor character in Clarissa, not Pleasant Rawlins.

2 Clarissa, pp.373,1116,1426-7.

Rape to force a Woman, who conceived...because if she had not consented, she could not have conceived';¹ popular wisdom continued to maintain that pregnancy implied consent. When Clarissa's uncle asks her if she is pregnant and Lovelace hopes she is, the socio-legal context should be borne in mind or we will fail to understand the insult to Clarissa and the problems she would face in trying to convince a jury that she was 'defiled' within the terms of the statute. Steeves argues, 'It may not be a considerate question...yet it is a natural one. It is also one of interest to the reader', commenting somewhat contemptuously, 'Clarissa goes into throes of resentment that the question is asked, but she does not answer it!'² McCrea also objects, 'Clarissa will not offer a simple "yes" or "no"'.³ Their interest in the question is almost prurient and utterly inappropriate given the legal background: the Harlowes are gathering evidence in case they decide to prosecute Lovelace.

Lovelace has manipulated the situation so that Clarissa has lived in a 'horrid brothel'(p.994) with him. Clarissa is clearly worried about the effect this may have on a court case: 'when it came to be seen that I...had not been able to avoid living under one roof with him for several weeks...without complaint'(p.1253). Mrs Howe warns Clarissa that if she does not prosecute, it will be 'surmised that she fears 'some...lurking love, will appear upon the trial'(p.1016); Swendsen tried to prove that Rawlins had a 'lurking love' for him.

Swendsen's comments in court were at times worthy of a fictional rake: 'I could tell you of divers things that pass between lovers, that would be impertinent for me to relate to wise men'(p.580). Like Lovelace, he appealed to behaviour which had been publicly witnessed, but which could bear more than one interpretation. He insisted that Rawlins encouraged him, 'did you not say, if I would not sit by you, you would not eat a bit or a crumb', painting a comfortable domestic scene, with Rawlins peeling walnuts for him: 'she heaped my plate with them; every one at the table took notice of it'(p.578). He continued: 'she kissed me; and squeezed me by the hand, when we walked privately in the garden'. Rawlins countered, 'I did no such trick'(p.580), declaring, 'I did not walk in the garden alone with him'(p.581). Clarissa, of course, not only spent time alone with Lovelace in the garden, but corresponded secretly with him, even developing a system of private signals(p.374); this would not bode well in court.

Clarissa's failure to report the rape immediately could also prove problematic: she is raped on June 12th and escapes from Mrs Sinclair's on June 28th but she does not go to a magistrate. Blackstone notes that although 'there is no time of limitation fixed...the jury will rarely give credit to a stale complaint'(IV,pp.211-2). Rawlins complained almost immediately, which strengthened her case. However, it is worth noting that Rawlins had the support of her friends, who arranged for Swendsen's arrest; Clarissa's family and friends disown her. Beattie notes that 'few women on their own reported rape to a magistrate'.⁴

If Clarissa's family did not support her she would be vulnerable, particularly if Lovelace paid witnesses to present her as 'of evil fame...unsupported by others'⁵ in testimony. For Clarissa, reputation is not simply a moral issue but a

1 G.Jacob, A New Law Dictionary, 7th edition, 1756, under 'rape'. Further references are to this section.

2 H.R.Steeves, Before Jane Austen: The Shaping of The English Novel in The Eighteenth Century, New York: Holt, Rinehart and Winston, 1965, p.81.

3 B.McCrea, 'Clarissa's Pregnancy and Patriarchal Power', Eighteenth-Century Fiction, 9, no.2, January 1997, pp.125-148, (p.126). McCrea provides an interesting analysis of the consequences of a potential pregnancy but does not address the legal context. He argues: 'In her reticence about her pregnancy, Richardson places Clarissa where she endorses neither an historical nor a Lacanian view of the patriarch. Were she to admit herself to be with child, she would vindicate Lovelace's replacement of the biological father with the name-father...Were she to declare herself to be without child, she would open the way for a rapprochement with her family...She would submit again to the power of weak men whose only strength lies in their tie to the phallus'(p.147). Issues of patriarchy clearly need to be addressed but the key to understanding the issue of a possible pregnancy in eighteenth-century terms lies in its legal implications for a potential court case. Gwilliam notes perceptively that 'Both Lovelace and the Harlowes watch intently for evidence of the betraying sign' of pregnancy and thus potential consent, but that 'Clarissa's body...thwarts Lovelace's attempt to mark it' (p.83).

4 J.Beattie, Crime and the Courts in England 1600-1800, Oxford: Clarendon Press, 1986, p.127.

5 Blackstone, Commentaries, IV,p.213.

potential legal disadvantage. Blackstone explains that 'the credibility of [the victim's] testimony'(IV,p.213) is to be determined by the jury: Clarissa would be as much on trial as Lovelace, perhaps more so. If Brand, employed by the Harlowes to investigate Clarissa's 'life and conversation', produces a report based on 'conjectural scandal'(p.1290), even suggesting that Clarissa is having an affair with Belford, it would clearly not be difficult for Lovelace to pay someone to produce a similarly damaging report.

In addition, Clarissa has no supporting testimony concerning the crime. Anna is prepared to testify and Hickman may well support her testimony but they can only relate what Clarissa has recounted to them. Zomchick argues that Belford might testify for Clarissa but it seems unlikely that he would willingly become an instrument to injure Lovelace. Indeed, he articulates popular arguments that marriage could atone for rape: 'repair thy sin of ingratitude...in making her lawfully thine'(p.885), echoing Lovelace's assertion, 'cannot I repair by matrimony?'(p.879).

Clarissa insists on seeing the rape as a personal injury but the other characters, like Rawlins's family, see it in terms of law, regarding her as 'belonging' to her family; her chastity and thus her potential worth in marriage negotiations has been irreparably damaged and so they see it as a family dishonour, which affects their social standing and their financial position. The essential difference between the Rawlins and Harlowe cases is of course that Lovelace is an aristocrat and thus an acceptable marriage partner in social and financial terms; Swendsen had neither aristocratic birth nor fortune to support him.

Dr Lewen tells Clarissa, 'the reparation of your family dishonour now rests in your own bosom: and which only one of these two alternatives *can* repair; to wit, either to marry, or to prosecute him at Law'(p.1251). He recognises that 'It is a terrible circumstance...for a young lady of your delicacy to be under the obligation of telling so shocking a story in public court' but argues, somewhat naïvely, 'think no truth immodest that is to be uttered in the vindicated cause of innocence'(p.1252). Clarissa is rather more realistic in her views concerning the possible reparation to be obtained by a court prosecution, detailing the weaknesses of her case and reminding him that even if she were successful, she would be 'censured as pursuing with sanguinary views a man who offered me early all the reparation in his power'(p.1253) by promising marriage.

Clarissa is aware that she has no direct witnesses to support her. The only witnesses who can testify to the essential evidence of penetration and emission¹ are Sinclair and her associates. Zomchick objects, 'would the testimony of the likes of Mrs Sinclair, a notorious brothel-keeper, convince a jury?'(p.98). Perhaps not, but it can hardly be assumed that Lovelace would be unable to produce other servants willing to testify for a fee. He tells us, 'All the house [is] in my interest, and everyone in it...engaging to intimidate, and assist, as occasion shall offer'(p.945).

Servants were frequently used as witnesses because of their privileged position in observing their employers.² The crim.con. case brought by the Duke of Norfolk against John Germaine in 1692 provides a useful example of such testimony. Margaret Ellwood, a maid, described spying on her mistress: 'I...looked through the key-hole...and saw them go to bed'. She was asked, 'Had they no curtains?' but replied shamelessly, 'Yes, my lord [but] they left them open at the foot'. She testified that she saw Lady Norfolk 'upon the stools in an ill posture, Mr Germaine's breeches were down; he pulled them up, and laid his hand on his sword, saying, 'God damn you for a whore, how have you the impudence to come here?' My lady bid him kick me down; he scattered some concerns, that is, man's nature, on the boards'.³ Given that Clarissa has no supporting medical evidence, this is precisely the sort of testimony she would need. It is also presumably the kind of testimony she would wish to avoid: 'I would sooner suffer every evil (the

1 In order to prosecute rape or 'defilement' successfully, Jacob explains that one had to prove 'Penetration and Emission'; otherwise, 'an Attempt to ravish a Woman, though it be never so outrageous, will be an Assault only.'

2 Stone notes that some servants kept written notes concerning suspicious behaviour for future use as blackmail or in court. See *Road to Divorce*, pp.211-27.

3 *State Trials*, XII, pp.930,903-4.

repetition of the capital one excepted), than appear publicly in a court to do myself justice'(p.1019).

Swendsen's trial enables us to form an idea of what would have been heard at Lovelace's trial. Sabina Busby, Rawlins's companion, gave a dramatic account of Rawlins's arrest: 'The bailiffs...took her by violence...I put my head out of the window, and cried Murder! murder!' commenting in a manner worthy of a novelistic heroine, 'we said we would die together'(p.569). Busby was forcibly detained at a tavern, where she claimed, 'I began to be afraid, for I did not know how my life might be concerned'(p.570).

Swendsen endeavoured to prove that in spite of the arrest, Rawlins married him willingly. Scoreman, who witnessed a conversation between Busby and Rawlins while drawing Baynton's portrait, testified that Busby complained that Rawlins 'had a love for Mr Swendsen more than [Mr Pugh]'. Holt¹ asked, 'You heard her say so?' and Scoreman admitted, 'No; but I can say Mrs Baynton said so'(p.579), admitting under pressure, 'I do not know that she said so or not'. Swendsen, dissatisfied with this testimony, commented ingeniously, 'He cannot speak English right, I will speak it to him'(p.580). His offer to phrase Scoreman's testimony for him was refused.

Scoreman's narrative would not be out of place in a novel: 'They were playing at cards, and she took up the tricks of Mr Swendsen, which discovered love'.² Holt tried to force Scoreman back to plain fact, 'The question is, Whether you did hear them speak anything of love'. Swendsen interjected again, 'he would speak better with an interpreter' but Holt insisted, 'He speaks English well enough' and Scoreman admitted, 'I heard but a few words, and cannot say much of it'(p.580).

The parson testified to the lawfulness of the marriage: Swendsen had 'a true licence', the parson checked Rawlins's name, and she told him 'she was willing' to marry. However, the picture created by the parson's testimony is somewhat seedy; the parson and clerk 'sat the drinking a pint of wine'(p.582) in a room separate from the couple and then performed the marriage after purely perfunctory examination of the licence. He was a Fleet parson, which may cast some doubt on his probity, and the marriage was conducted 'in a tavern, and out of canonical hours'.³ Lovelace writes to Clarissa, 'You may think it impossible for me to reach London by the canonical hour. If it should, the ceremony may be performed in your own apartment at any time in the day, or at night'(p.960). Given the moral dubiousness of such marriages, Lovelace is in fact insulting Clarissa, offering marriage safe in the knowledge that she will feel unable to accept.⁴

Holt endeavoured to establish the level of force used against Rawlins. He asked Cotchett, an innkeeper, 'Did you hear any noise, or perceive any violence offered to the young woman?' Cotchett replied, 'No, my lord'. His wife admitted, 'we admired...that there should be a wedding and bailiffs', but commented that Rawlins 'seemed not discontented'(p.583) after the marriage. Walker, the cook, testified that Rawlins 'seemed to be very melancholy' and would not eat anything at supper. However, Swendsen argued that the Recorder, one of the chief Judges at the Old Bailey, 'promised [Walker] a reward, if she would say any thing for their service'. Walker admitted that she was told 'that if I knew any thing, and discovered it, I should be satisfied for my trouble'(p.584).

1 Lord Chief Justice Holt, the senior of the four Judges at the trial; it was not uncommon for Judges to ask questions of the witnesses.

2 The parallel between courtship and the stratagems of card games, is a familiar literary convention. In Pope's *Rape of the Lock* (1714), the Baron and Belinda play cards: the Baron 'wins (oh shameful chance!) the Queen of Hearts' but 'the King unseen / Lurk'd in [Belinda's] hand, and mourn'd his captive Queen'; he 'springs to vengeance' and thus Belinda's victory. Canto III, lines 88,91-3.

3 The canons of 1604 stipulated that a wedding should take place between eight in the morning and noon in the church of the place of residence of one of the spouses, after triple banns. They also forbade the marriage of persons under twenty one without parental consent. Ironically, while declaring marriages in breach of these rules illegal, the ecclesiastical courts still regarded them as binding for life, providing a clergyman had performed the ceremony. This position continued until Hardwicke's Act (1753).

4 For an account of Fleet parsons, chamber and tavern marriages, see R.Brown, 'The Rise and Fall of the Fleet Marriage', in *Marriage and Society: Studies in the Social History of Marriage*, ed.R.B.Outhwaite, London: Europa Publications, 1981, pp.117-36; S.Parker, *Informal Marriage, Cohabitation and the Law, 1750-1989*, London: Macmillan, 1990.

The Recorder suspected that Rawlins 'was drawn in by [Swendsen], who he feared was a spark and bully of the town'(p.588). Swendsen called four character witnesses, who testified that he was 'a very honest, just man'(p.590). Lovelace recognises the importance of reputation: 'in the very courts of justice, does not *character* acquit or condemn as often as facts, and sometimes even in spite of facts?'(p.862). Richardson may well be referring to trials such as Swendsen's; Lovelace appears to have attended such trials, a fashionable amusement at the time.

James Harlowe hires a man to enquire into Lovelace's character; the report provides an interesting example of potential evidence: 'he was a generous landlord' and although he had 'contracted a large debt...his estate was never mortgaged...his credit was always high'. He 'was never known to be disguised with liquor' but 'lived a wild life in town...although passionate, he was good humoured'. Despite being produced by 'an enemy'(p.50), the report was not sufficiently damaging for James to use(p.51). It would certainly not be very useful in a court of Lovelace's peers, of whom worse tales might be told.

Justice Powell told Swendsen at Baynton's trial, 'When you brought witnesses to give an account of your former life and conversation' as a man 'of good interest and acquaintance...I had great commiseration for you', blaming Baynton's influence as 'a very lewd woman'(p.633). The parallel with Sinclair's influence over Lovelace is evident. Sinclair, like Baynton, would be indicted as a principal offender; Clarissa warns her that 'what had been done to her was punishable by death'(p.964).¹

The lives, crimes and stratagems of Lovelace's associates are not dissimilar to those of which Baynton was accused. Sinclair presents herself as 'the [widow] of a man of honour...forced to let lodgings for her livelihood'(p.894). Baynton passed 'for a country [widow] of a plentiful fortune'(p.562) and 'made a very modest appearance in her behaviour and garb'(p.566). The Solicitor General argued that Baynton 'seemed to live a virtuous life, that she might ingratiate herself into the favour of the family', 'pretend[ing] she had a brother of a good estate, one of the best men in the world'. Swendsen '(being nothing related to [Baynton])...appeared as her brother, and frequently visited her under pretence of that relation'(p.562). We learn subsequently that 'there seemed to be an extraordinary love between [Baynton] and Swendsen'(p.566).

Lovelace's associates are also 'accustomed to ape quality' and seem to have 'an extraordinary love' for him. Johanetta Golding, who passes for Lovelace's cousin, and Bab Wallis, who passes for his aunt, are well known 'paramour[s] for lords'(p.875), apparently including Belford and possibly Lovelace. Sally and Polly, both seduced by Lovelace, encourage him to rape Clarissa and 'upbraidingly remind [him] of [his] first attempts upon themselves'(p.633).

Baynton contrived 'to get Mrs Rawlins and Mrs Busby into a coach' by offering to take them to church, 'and at a place appointed, the signal was given, and the writ [for debt] executed'(p.562). The scene is reminiscent of Lovelace's supposed relatives persuading Clarissa to go with them in a coach to Mrs Leeson's. The coach stops at Sinclair's and Clarissa, terrified, nearly faints. 'Lady Betty' insists, 'you are ill...you must alight' and they give her 'hartshorn and water'(p.1007). Disorientated, Clarissa enters Sinclair's house for tea, noting that 'the last dish particularly had an odd taste'(p.1008) and commenting, 'Ill before, I found myself still more and more disordered in my head; a heavy torpid pain increasing'(p.1009). Being desperately thirsty, she drinks the beer they bring, realising too late that it was 'a better vehicle...for their potions'(p.1010); barely conscious, she is raped.

The evidence is not favourable to Clarissa. Lovelace is careful to establish written evidence such as letters addressed to 'Mrs Lovelace' and an affidavit signed by witnesses at the dinner for Miss Partington confirming that Clarissa does not deny that she is his wife. Swendsen asked Justice Baber to 'administer a voluntary oath to [Rawlins]...that she was married to' him but Baber refused: 'I had nothing to do to confirm marriages, and told them I

¹ Blackstone explains that 'he who is present, aiding, and abetting...suffer[s] the same punishment as [the] principals': death (IV,pp.34,39).

was loath to meddle with it'(p.587).

Lovelace keeps 'drafts and copies of letters relating to this affair'(p.1287) in his closet, clearly aware of the potential legal advantages: 'what a poor hand would this charming creature...have made of it in a court of justice against a man who had so much to *say*, and to *show* for himself'. Yet he admits to Belford, confident that his friend will not betray him, 'has not every letter I have written to thee been a bill of indictment against myself'(p.719).

Swendsen presented a marriage licence 'in evidence to give colour to this marriage' but the Solicitor General argued: 'The licence bears date three weeks before the time of the marriage, which shews how long they had waited for an opportunity to accomplish this design'. In addition, Swendsen lied about Rawlins's age, swearing on oath 'that she was 25,' and that he was 35'(p.591) and Baynton posed as Rawlins's sister, giving the parson the impression that the family consented to the marriage(p.582).

Mrs Howe's proctor informs them that Lovelace has applied for a licence but 'as there is no [family] consent' and 'the lady is of rank and fortune'(p.703), he has some difficulty; however, as 'Lovelace is a man of high fortunes, these difficulties [are] got over'(p.750). Unlike Swendsen, he appears to obtain the licence lawfully and so could produce it as supporting evidence.

In addition, Lovelace establishes witnesses to his apparent good behaviour: 'Everyone bear witness, that I offer not violence to this beloved creature'(p.935). He, like Swendsen, would be able to demand confidently in court, 'Will your lordship please to ask her, whether I offered any violence to her either by word or deed?(p.581). The rape is an obvious exception but since the only witnesses were accomplices, Lovelace has little to fear.

Lovelace is adept at manipulating situations to his own advantage. When Clarissa attempts to escape, she appeals to passers-by, 'For the love of God...a poor, poor creature...ruined'(p.905) and they call a constable. Lovelace invites the constable and some of the 'mobbish inquisitors' into the parlour and tells Sinclair, 'produce one of the nymphs, onion-eyed...and let her own herself the person: the occasion, a female skirmish; but satisfied with the justice done her'(p.906).

Lovelace is constantly aware of the way in which evidence could be presented in court, realising 'it is but glossing over *one* part of a story, and omitting *another*, that will make a bad cause a good one' and commenting 'What an admirable lawyer should I have made'(p.1287). Knowledge of law was an intellectual 'accomplishment', a masculine equivalent to the domestic and artistic accomplishments deemed appropriate for women. Young gentlemen often had chambers at the Inns of Court, regardless of whether or not they intended to study law. Lovelace is a self-styled commentator on law, evaluating it from a rake's perspective, as no doubt did many young men of the period as they discussed the latest scandalous trials in the taverns. As Congreve notes in *The Way of the World* (1700), 'young revellers of the Temple take notes' at trials and 'talk it over again...before drawers in an eating-house'(V,sc.v).

Lovelace manipulates juridical constructs for amusement, arranging evidence and potential testimony. Yet what Zomchick refers to as his 'juridical fancy'(p.82) has a potentially serious application which twentieth-century readers are unlikely to recognise: if he is prosecuted, he will have to defend himself in court. Blackstone explains: 'no counsel shall be allowed a prisoner...in any capital crime, unless some point of law shall arise proper to be debated'(IV,p.349).² Lovelace's juridical games are in one sense a rehearsal; he imagines a court scenario, revelling in the potential for drama and self-display: 'even the judges, and the whole crowded bench, will acquit us in their hearts;

1 Rawlins is 'above the age of sixteen, and under the age of eighteen'(p.560); Clarissa is eighteen when she leaves home (p.223). In theory, parental consent would be necessary in both cases but its absence would not invalidate either marriage because Hardwicke's Act was not yet in force.

2 Baker argues that during the century it became more common 'for counsel to be permitted to conduct the case or to prompt the accused'. J.H.Baker, 'Criminal Courts and Procedure at Common Law 1550-1800', *Crime in England 1550-1800*, ed.J.S.Cockburn, London: Methuen, 1977, p.38. However, this right was by no means universal and was, as Blackstone complained, 'left to the good pleasure of [the] judge'(IV, p.350). Felons did not have the right to a defence lawyer until 1836.

and every single man wish he had been me! - the women, all the time, disclaiming prosecution, were the case to be their own'. Continuing his self-dramatization, he writes with heavy symbolism: 'I shall have a dozen or two of young maidens, all dressed in white, go to court to beg my life'.¹ Gwilliam suggests pertinently that for Lovelace, 'rape becomes the prelude to the (more satisfying) seduction of an audience. In this parody of a wedding, the women are displayed as objects of desire who exist primarily to enhance Lovelace's status'(p.79).

Lovelace's imaginary trial is clearly egocentric; he refers to it as a 'raree-show', imagining 'shoals of people following'(II,p.423). Yet his vision is an extreme version of reality: such a rape trial would indeed attract a great deal of publicity and a large 'audience'. Court proceedings, whether at the county assizes or Westminster itself, attracted spectators from a wide social spectrum. Hay notes that nobles, 'Tradesmen and labourers journeyed in to enjoy the spectacle, meet friends, attend the court and watch executions'.² Trials concerning sexual crimes were reported with eager attention to every scandalous detail in a manner which would draw blushes from all but the hardest twentieth-century tabloid journalists and followed by the public as enthusiastically as many soap operas are today; indeed, they had all the same ingredients.³ Swendsen commented during Baynton's trial, 'my trial has already made a great noise in the world'(p.631).

The drama of Swendsen's trial became even more apparent when he cross-examined Rawlins. Victims of sexual assault continue to report that court interrogations are tantamount to an assault; eighteenth-century victims were in the more terrifying position of being interrogated not by strangers but by their aggressor. These exchanges led inevitably to prurient interest in the 'audience', the verbal struggle paralleling the earlier physical one.

Clarissa's reticence to prosecute is due partly to fear of a humiliating public court examination conducted by Lovelace. Swendsen asked repeatedly that Rawlins be removed as far as possible from her friends in the courtroom and the prosecutor objected, 'he does it on purpose to fright her'(p.578). Lovelace's performance at the mock trial at Mrs Moore's indicates that he would be far more intimidating.

Clarissa reflects common fears regarding appearing in court: 'suppose...it were insisted upon that I should appear to prosecute him and his accomplices in a Court of Justice, how do you think I could bear that?'(p.1013). Staves argues that 'in novel after novel' victims and their families are 'too imbued with their own gentility to have recourse to the supposedly more bourgeois threat of civil litigation'(p.133). Ian Bell notes more realistically, 'The violated woman' was 'subject to gruelling and potentially humiliating examination in public. As a result, there is every reason to believe that such officially-sanctioned hostile treatment...led to rape being seriously under-reported to the courts'.⁴ Fielding noted the difficulties facing women in such situations in that they may be 'Delicate, and cannot appear in a public Court', 'Tender-hearted, and cannot take away the Life of a Man' or simply 'Necessitous, and cannot really afford the Cost'.⁵

It is a measure of Clarissa's courage that she promises Anna that if Lovelace 'sets on foot any machination against you, or Mr Hickman...I will consent to prosecute him'(p.1021). The 'I' is important: Clarissa knows, as many twentieth-century readers do not, that if she has to prosecute Lovelace, she will have to take an active rôle in contesting

1 S.Richardson, *Clarissa* (1747-8), edited by B.A.Wright, 4 vols, London: Dent, 1967, II,pp.422,424. This important letter, which Richardson added to the third edition in 1751, is omitted in the Penguin edition, which is based on the first edition. Further references to the Dent edition are indicated by giving a volume number as well as a page number.

2 *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed.D.Hay, P.Linebaugh, London, 1975, p.27. See also B.Jones, *Henry Fielding: Novelist and Magistrate*, London: Allen and Unwin, 1933, pp.32-3.

3 See H.Lüsebrink, 'Les Crimes Sexuels Dans Les "Causes Célèbres"', *Le XVIIIème Siècle*, XII, 1980, pp.153-162; P.Wagner, 'Trial Reports as a Genre of Eighteenth-Century Erotica', *British Journal for Eighteenth-Century Studies*, V, no.1, Spring, 1982, pp.117-121; P.Wagner, 'The Pornographer in the Courtroom', in *Sexuality in Eighteenth-Century Britain*, Manchester: Manchester University Press, 1982, edited by P.G.Boucé, pp.120-40.

4 I.Bell, *Literature and Crime in Augustan England*, London: Routledge, 1991, p.101.

5 H.Fielding, *An Enquiry into the Causes of the Late Increase of Robbers*, ed. M.Zirker, Oxford, 1988, p.154.

his testimony in the courtroom, since the usual practice was for both parties to present their testimony directly to the court, sometimes even cross-examining each other.¹ Wood explains that the accused 'shall have no Counsel...because the Evidence must be so plain that it cannot be denied, and because the Court ought to be of Counsel for the Prisoner, and to Allow Him all Things that make for His Advantage'.² The assumption was that truth would become apparent not only through the testimony but also the behaviour of the parties in court. Clarissa's earlier experience at interrogating and challenging Lovelace in front of Mrs Moore and her friends does not augur well: his rhetorical skills undermine her testimony, rendering her unable to refute much of his argument and he manipulates her behaviour to present her as emotionally unbalanced.

Rawlins provides a useful example of a plaintiff's experience in court. Her dramatic testimony elicited sympathy from the 'audience': 'the parson...told me, if I did not marry [Swendsen] I should be sent to Newgate and ruined for ever'; 'I was forced to marry him out of fear...of being murdered'(p.576). She testified: 'They thrust me up stairs, and ordered to have a bed sheeted...Baynton said to me, undress and go to bed. I said, I would not...She said, she would pluck off my cloaths and make me go to bed'. Rawlins argued that Baynton used 'Such violence that made me go to bed'(p.577) and spend the night with Swendsen. However, Blake, the maid, testified that Rawlins helped to undress herself(p.584). Baynton challenged Rawlins during her subsequent trial, 'Did you not pluck off your things [and] say, Come to bed, my dear husband'(p.620) but Rawlins denied it. Swendsen's confession, left with the Ordinaries, declared, 'My familiarity with Mrs Rawlins before my marriage was so great, that there was no room left for me to practise violence upon her'(p.635).

There are disturbing parallels between the behaviour of Richardson's fictional monster, Sinclair, and the trial narratives concerning Baynton. Lovelace comments, 'there have been more girls ruined, at least *prepared* for ruin, by their own sex (taking in servants, as well as companions), than *directly* by the attempts and delusions of men'(p.865). The Justice at Baynton's trial argued that Baynton was primarily responsible for Rawlins's abduction and defilement: 'your design was to entice and delude this young woman'(p.633), as if she, like Sinclair, took pleasure in encouraging rape. Even Lovelace marvels that those 'who once loved a man with so much distinction as both Polly and Sally loved me' can 'promote a competitorship in his love, and make their supreme delight consist in reducing others to their level'(p.729).

Sinclair is clearly aware of the possibilities for prosecution and so decides 'that the key should be kept in the [street] door; that their numerous...guests, should be able to give evidence that [Clarissa] might have gone out if she would'(p.965). She further reduces Clarissa's chances of success by drugging her. Jacob notes that women had to provide coherent and accurate testimony, for example, if a victim was 'wrong in the Description of the Place', her testimony would be unlikely to persuade a sceptical jury. Clarissa was so badly affected by drugs that she does not know exactly what happened: 'I was so senseless that I dare not aver that the horrid creatures of the house were personally aiding and abetting'(p.1011). She is aware that 'Little advantage *in a court* (perhaps bandied about, and jested profligately with)³ would some of those pleas in [her] favour have been, which *out of court*, and to a *private* and *serious* audience, would have carried the greatest weight', for example 'the infamous methods to which he had recourse'(p.1253) by drugging her.

Rawlins did not provide coherent and consistent testimony. When asked, 'Did you say you consented to the marriage before [the constable?]' she replied, 'if I did, I was not in my senses'(p.586). She claimed not to drink but admitted

1 The rôles of defence and prosecuting lawyers had yet to be fully determined in this period. See J.Langbein, 'The Criminal Trial before the Lawyers', University of Chicago Law Review, 45, no.2, 1978, pp.263-316.

2 T.Wood, An Institute of the Laws of England, 4 vols, fourth edition, London, 1728, IV,p.645.

3 Juries were of course male; as J.H.Baker notes in 'Criminal Courts and Procedure at Common Law 1550-1800', 'women were by custom excluded', p.29.

during Baynton's trial, 'I was very much intoxicated, I hardly knew I had a head', although Baynton insisted, 'you can drink your glass of wine as well as any one else'(p.621). When Swendsen declared, 'She said...I am very well content with the marriage', Rawlins responded, somewhat evasively, 'I do not know but I might; but I did not know what I said'(p.586). She was unable even to identify Hartwell, who arrested her(p.608). Swendsen asked the court to note that 'What she denied in my trial, she confessed in Mrs Baynton's'(p.630).

Johnson, a juror, drew attention to these inconsistencies and argued, 'my conscience will not let me [declare] that [Swendsen] is guilty'(p.616). Eighteenth-century juries were subject to pressures which twentieth-century readers may not recognise: they could be denied food and light until they reached a unanimous decision. The jury foreman commented, 'We...have been fasting all day'(p.617). Notes to the trial argued that this 'was putting the decision of causes into the power of those jurymen who...could go longest without food', an absurdity which would not be out of place in *Gulliver's Travels* (1726). Not surprisingly, Johnson gave in to the majority verdict and Swendsen was convicted and sentenced to death.

However, as Flynn demonstrates, Clarissa's case would be unlikely to be successful. Flynn considers it in relation to the trial of Lord Baltimore for raping Sarah Woodcock, a milliner. Despite medical testimony supporting Woodcock, the jury acquitted Baltimore due to circumstantial evidence such as Woodcock not showing any sign of distress while living with him.' Keymer agrees with her analysis, noting that Clarissa's 'clandestine dealings with [Lovelace] at Harlowe Place and her long residence at 'Dover Street' make against her; his rhetorical powers would give him the advantage in court; and even if convicted he has influence enough to win himself a pardon'(p.220).

Clarissa is conscious that any prosecution is unlikely to be successful, referring to a potential court hearing as 'pursuing a doubtful event, under the disadvantages I have mentioned'(p.1255). Her case, like Woodcock's, is weakened by having spent some time apparently living with Lovelace without distress. Yet the primary problem in both cases appears to be the social standing of the attacker. Lovelace confidently asserts, 'There is no fear of being hanged for such a crime as this, while we have *money* or *friends*'(II,p.424). Clarissa writes, 'had the prosecution been carried on to *effect*, and had he even been *sentenced to death*, can it be thought that his family would not have had interest enough to obtain his pardon for a crime thought too lightly of'(p.1253). Zomchick provides an interesting consideration of Clarissa's probable chances in a prosecution against Lovelace' but he underestimates what Castle refers to as 'the institutionalized advantages of patriarchal power'(p.193), something Richardson's characters are all too conscious of.

Lovelace is clearly aware of the legal bias in favour of the aristocracy; as Blackstone explains, 'in criminal cases a nobleman shall be tried by his peers'(I,p.401). Lovelace would face men such as Lord M; this underlines both Lovelace's place within the legislating classes (he is himself a Justice, if we believe his claim, p.1211) and the ease with which he would be able to win them to his cause. Lord M's bombast, reminding Lovelace that 'peers are judges...in the last resort...if by committing an unlawful act, a capital crime is the consequence, you are answerable', becomes increasingly ridiculous given that he is unable to counter Lovelace's specious reasoning; as Lovelace records it, 'he could not answer me'(p.1438). Lovelace's rhetoric makes fools of all who hear him. He confidently expects, at worst, 'taking [his] pleasure abroad'(II,pp.424-5) in exile and comments that if they are convicted they need only 'make over [their] estates, that the sheriffs may not revel in [their] spoils'(II,p.424), referring to the seizure of the estates of felons and exiles.

Lovelace is not being unrealistic when he comments, 'Westminster Hall', the chief English court, 'affords every day as confident defences as mine'(p.1031). Real examples bear this confidence out: Lord Baltimore was indicted for rape but acquitted by his peers. Colonel Charteris was found guilty of raping a maidservant but was only imprisoned for a few years, despite the fact that rape carried the death penalty. He was ultimately pardoned by the King.

1 C.Flynn, Richardson: A Man of Letters, pp.111-12.

2 Zomchick, Family and The Law, pp.96-99.

It is significant that Charteris and Baltimore raped women of lower social status: poor women's chastity was consistently regarded as less important than that of aristocratic ladies because it had no value in terms of the inheritance cycle, a point Richardson exposes in *Pamela* (1740). Polly refers to the rape of Clarissa as 'the vilest of rapes on a person of condition'(p.965). The gravity of Lovelace's crime rests on Clarissa's status as heiress, rather than on personal injury, as Clarissa sees it.

Swendsen was described as a yeoman of 'dishonest conversation' and 'very little estate',¹ who had effectively stolen upper class 'property';² Justice Powell described the crime as 'fortune-stealing'(p.631). Swendsen declared that he was condemned because Rawlins's family, 'a powerful interest', bribed and 'hindered [witnesses] by force from appearing in court for me'(p.636).

The Swendsen case raises uncomfortable questions about witness reliability, the class bias of the judicial system, even the fundamental practice of the courts, predicated on the idea that innocence did not need the support of a legal professional, that 'truth would out' if impartial juries could interpret the behaviour of the parties in court. Keymer notes that 'At Lovelace's trial, however, it is the victim's plea that is defeated, while the rapist's opportunity to speak for himself leads not to self-incrimination but to acquittal', recognising 'The implications for the novel's larger trial'(p.239) in terms of its complex presentation of 'truth' through the letters and counter-letters painstakingly compiled and edited.

Yet it also raises questions about the judicial process, which relied on innocence somehow making itself apparent, something approximating to Clarissa's early faith in the power of innocence. Lovelace criticises what he sees as her naïveté: 'that Security which Innocence gives, that nevertheless had better have in it a greater mixture of the Serpent with the Dove...A dear silly Soul...to depend upon the goodness of her own heart, when the heart cannot be seen into but by its actions; and she, to appearance, a Runaway, an Eloper, from a tender, a most indulgent Husband! - To neglect to cultivate the opinion of individuals, when the whole world is governed by appearance'(V,122; III,64).

As Kinhead-Weekes points out, 'The criticism of a world so governed is clear enough, but the criticism of Clarissa is plain as well. It is not enough for her to wrap herself in her own innocence; in the world as it is, Clarissa is betrayed not only by her physical cowardice but by the theoretic and idealistic nature of her views'(p.222).' I do not see evidence of physical cowardice on Clarissa's part but clearly her idealism works against her in 'the world as it is'. However heroic her uncompromising moral stance may be in Christian terms, it becomes increasingly clear that it cannot survive the sort of confrontation that Lovelace is proposing, symbolised in the courtroom, a place which should signify the ideals of truth and justice which are so important to Clarissa but which in fact often signalled the triumph of legal fictions over the less rhetorically gifted innocent parties.

Richardson is aware that Clarissa's innocence will not survive earthly trials in a physical sense but his primary concern is for her soul. While her attitude may seem naïve, she is in fact brutally realistic: she would almost certainly lose in a court case against Lovelace and, whatever the outcome, it would be costly to her both personally and financially. She makes a pragmatic decision based on her understanding of the world and its institutions, rejecting an imperfect system of justice in which, as Lovelace reminds us, 'the heart cannot be seen into' and turning to one in which nothing is hidden. Clarissa is confident that she will be able to face the ultimate court of heaven; hence her comparative lack of concern at what happens to her on earth.

1 Anyone familiar with eighteenth-century trials may be tempted to assume that, as Elizabeth Bennet comments, 'His guilt and his descent appear by your account to be the same'. J.Austen, *Pride and Prejudice* (1813), edited by T.Tanner, Harmondsworth: Penguin, 1982, p.137.

2 Women were regarded as their fathers' property, until 'ownership' was transferred to a husband through marriage. Sheridan's eighteenth-century dictionary defines 'property' not simply as an object but as a 'right of possession'. His definition of 'to possess' is particularly relevant to attitudes throughout the eighteenth-century towards women: 'to be master of; to enjoy; to have power over'. T.Sheridan, *A General Dictionary of the English Language* (1780), 2 vols, Menston, England: The Scholar Press, 1967.

Hay comments interestingly on eighteenth-century parallels between human and divine justice: 'In its ritual, its judgements and its channelling of emotion the criminal law echoed many of the most powerful psychic components of religion...judges [were usually] likened to God, deriving their authority from divine authority', 'The powers of light and darkness were summoned into the court with the black cap which was donned to pronounce sentence of death, and the spotless white gloves worn at the end of a 'maiden assize' when no prisoners were to be left for execution'.¹

For *Clarissa* and her creator, human courts are but a pale reflection of divine justice: 'truth' is not an absolute but a probable, dependent on interpretation. Richardson makes the reader conscious of this fundamental juridical problem through the essentially rhetorical nature of much of Lovelace's discourse.²

Through the central characters, Richardson dramatises an eighteenth-century 'battle of the sexes', polarised by their positions in law. Lovelace exploits the advantages given to him by a patriarchal system whose absurdities he exploits for humour but whose double standards protect him; *Clarissa* rejects both him and the system which empowers him and deprives her of basic human rights.

The Harlowe and Rawlins cases end very differently. Swendsen, though probably innocent, was condemned, by class as much as by evidence. Lovelace, though clearly guilty, never faces trial; even if he had, the very things which condemned men such as Swendsen, would have protected him. Yet the cases, one fictional, the other a matter of historical record, raise similar issues. Swendsen feared the power of rhetoric and pleaded with the court to address issues such as the ludicrously unreliable testimony of witnesses and the power of his antagonists to corrupt the legal process, yet he was destined to fail; 'truth' was too intangible to make itself heard. In *Clarissa*, Richardson addresses the same issues, encouraging the reader to consider them for him or herself. Perhaps most disturbingly of all, neither narrative provides any answers.

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¹ 'Property, Authority and the Criminal Law', in *Albion's Fatal Tree*, pp.29-30, 27.

² See Posner's analysis of the fields of literature and law in terms of the 'parallel concern with the problematics of interpretation', the ways in which 'Judges and other lawyers resemble literary artists in the close attention they pay to the choice of words', *Law and Literature*, pp.1-21 (pp.11,9).